

AMENDED IN SENATE AUGUST 19, 2015

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 786**

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**Introduced by Assembly Member Levine**  
**(Coauthor: Assembly Member Cooley)**  
(Coauthor: Senator Allen)

February 25, 2015

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An act to ~~add Section 2251 to, and to add and repeal Section 2252 of, the Elections Code, relating to elections; amend Section 4735 of the Civil Code, relating to common interest developments, and declaring the urgency thereof, to take effect immediately.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 786, as amended, Levine. ~~National Voter Registration Act of 1993. Common interest developments: property use and maintenance.~~

*The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law provides that, unless otherwise provided in the common interest development declaration, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to that interest. Existing law makes void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of low water-using plants, or prohibits or restricts compliance with*

*water-efficient landscape ordinances or regulations on the use of water, as specified.*

*Existing law also prohibits an association, except an association that uses recycled water for landscape irrigation, from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency or the local government has declared a local emergency due to drought.*

*This bill would limit that exception to only associations that use recycled water for all home and common area landscaping irrigation.*

*This bill would incorporate additional changes to Section 4735 of the Civil Code proposed by AB 349 that would become operative if this bill and AB 349 are enacted and this bill is enacted last.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law, the federal National Voter Registration Act of 1993, requires a state to establish procedures to register a person to vote by application made simultaneously with an application for a motor vehicle driver's license, by mail application, and by application in person at a registration site or designated voter registration agency. With respect to an application made simultaneously with an application for a motor vehicle driver's license, the act requires the motor vehicle driver's license application to serve as an application for voter registration with respect to an election for federal office, unless the applicant fails to sign the application, and requires the application to be considered as updating the applicant's previous voter registration, if any. The federal act defines "motor vehicle driver's license" to include any personal identification document issued by a state motor vehicle authority.~~

~~The United States District Court for the Northern District of California, in the matter of Wilson v. United States, held that the federal act is constitutional and on May 4, 1995, ordered the State of California to implement the State's Plan for Implementation of the National Voter Registration Act.~~

~~Under existing state law, a person may not be registered to vote except by affidavit of registration. Existing state law establishes procedures for a person to register to vote by mail or by application in person at a registration site or office of a designated voter registration agency. Existing state law also requires a properly executed affidavit of registration to be deemed effective upon receipt of the affidavit by the county elections official if the affidavit is submitted to the Department~~

of Motor Vehicles, or accepted by any other public agency designated as a voter registration agency, on or before the 15th day before the election.

To the extent the state's plan is inconsistent with the federal act, this bill would require the Department of Motor Vehicles, in coordination with the Secretary of State, to take additional steps to fully implement and further comply with a specified provision of the federal act.

Existing law prohibits a voter who is registered to vote in one county from registering to vote in another county unless he or she complies with certain requirements. Existing law also requires a county elections official to accept a notice or letter from a voter, as well as notification submitted to the Department of Motor Vehicles or accepted by other public agencies pursuant to federal law, indicating a change of address within a county and to change the voter's affidavit of registration accordingly, under prescribed circumstances.

This bill, until July 1, 2016, would require the Department of Motor vehicles, upon receiving from a registered voter a request to inform the Secretary of State that the voter has moved to a different county, to notify the county elections official in both the county from which the voter has moved, and the county to which the voter has moved, of the change of address.

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~yes~~<sup>no</sup>. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The Legislature finds and declares that due to*
- 2     *the ongoing emergency drought conditions the State should*
- 3     *maximize opportunities to conserve potable water, including*
- 4     *encouraging homeowners to limit water intensive landscaping and*
- 5     *removing all impediments to that goal.*
- 6     *SEC. 2. Section 4735 of the Civil Code is amended to read:*
- 7     4735. (a) Notwithstanding any other law, a provision of the
- 8     governing documents or architectural or landscaping guidelines
- 9     or policies shall be void and unenforceable if it does any of the
- 10    following:
- 11    (1) Prohibits, or includes conditions that have the effect of
- 12    prohibiting, the use of low water-using plants as a group or as a
- 13    replacement of existing turf.

(2) Has the effect of prohibiting or restricting compliance with either of the following:

(A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code.

(B) Any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the Water Code.

(b) This section shall not prohibit an association from applying landscaping rules established in the governing documents, to the extent the rules fully conform with subdivision (a).

(c) Notwithstanding any other provision of this part, an association, except an association that uses *where* recycled water, as defined in Section 13050 of the Water Code, ~~for is used for all~~ *home and common area* landscaping irrigation, shall not impose a fine or assessment against an owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during any period for which either of the following have occurred:

(1) The Governor has declared a state of emergency due to drought pursuant to subdivision (b) of Section 8558 of the Government Code.

(2) A local government has declared a local emergency due to drought pursuant to subdivision (c) of Section 8558 of the Government Code.

*SEC. 2.5. Section 4735 of the Civil Code is amended to read:*

4735. (a) Notwithstanding any other law, a provision of the governing documents or architectural or landscaping guidelines or policies shall be void and unenforceable if it does any of the following:

(1) Prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group or as a replacement of existing turf.

(2) *Prohibits, or includes conditions that have the effect of prohibiting, the use of artificial turf or any other synthetic surface that resembles grass.*

~~(2)~~

(3) Has the effect of prohibiting or restricting compliance with either of the following:

(A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code.

1 (B) Any regulation or restriction on the use of water adopted  
2 pursuant to Section 353 or 375 of the Water Code.

3 (b) This section shall not prohibit an association from applying  
4 landscaping rules established in the governing documents, to the  
5 extent the rules fully conform with subdivision (a).

6 (c) Notwithstanding any other provision of this part, an  
7 association, except an association ~~that uses~~ *where* recycled water,  
8 as defined in Section 13050 of the Water Code, ~~for is used for all~~  
9 *home and common area* landscaping irrigation, shall not impose  
10 a fine or assessment against an owner of a separate interest for  
11 reducing or eliminating the watering of vegetation or lawns during  
12 any period for which either of the following have occurred:

13 (1) The Governor has declared a state of emergency due to  
14 drought pursuant to subdivision (b) of Section 8558 of the  
15 Government Code.

16 (2) A local government has declared a local emergency due to  
17 drought pursuant to subdivision (c) of Section 8558 of the  
18 Government Code.

19 (d) *An owner of a separate interest upon which water-efficient*  
20 *landscaping measures have been installed in response to a*  
21 *declaration of a state of emergency described in subdivision (c)*  
22 *shall not be required to reverse or remove the water-efficient*  
23 *landscaping measures upon the conclusion of the state of*  
24 *emergency.*

25 *SEC. 3. Section 2.5 of this bill incorporates amendments to*  
26 *Section 4735 of the Civil Code proposed by both this bill and*  
27 *Assembly Bill 349. It shall only become operative if (1) both bills*  
28 *are enacted and become effective, (2) each bill amends Section*  
29 *4735 of the Civil Code, and (3) this bill is enacted after Assembly*  
30 *Bill 349, in which case Section 2 of this bill shall not become*  
31 *operative.*

32 *SEC. 4. This act is an urgency statute necessary for the*  
33 *immediate preservation of the public peace, health, or safety within*  
34 *the meaning of Article IV of the Constitution and shall go into*  
35 *immediate effect. The facts constituting the necessity are:*

36 *California is in a state of emergency because of the continued*  
37 *drought. In response, Governor Brown issued Executive Order*  
38 *B-29-15, ordering a 25 percent statewide reduction in urban water*  
39 *consumption. Because residential landscaping accounts for 35*  
40 *percent or more of the average urban water usage statewide, many*

1 *homeowners have voluntarily ceased watering landscaping in*  
2 *order to assist with the drought emergency. However, some*  
3 *homeowners associations have interpreted existing law to allow*  
4 *them to fine homeowners who voluntarily cease using potable*  
5 *water on their landscaping if the homeowners association itself is*  
6 *using a de minimis amount of recycled water on common areas.*  
7 *This is directly contrary to the state's need to conserve the precious*  
8 *and dwindling water supplied for urban, agricultural, and*  
9 *environmental needs.*

10 SECTION 1. ~~Section 2251 is added to the Elections Code, to~~  
11 ~~read:~~

12 ~~2251. To the extent the State's Plan for Implementation of the~~  
13 ~~National Voter Registration Act, which was adopted and ordered~~  
14 ~~implemented by the United States District Court for the Northern~~  
15 ~~District of California on May 4, 1995, in the matter of Wilson v.~~  
16 ~~United States (Nos. C 95-20042 JW, C 94-20860 JW), is~~  
17 ~~inconsistent with the federal National Voter Registration Act of~~  
18 ~~1993 (52 U.S.C. Sec. 20501 et seq.), and notwithstanding any other~~  
19 ~~provision of state law, the Department of Motor Vehicles, in~~  
20 ~~coordination with the Secretary of State, shall take additional steps~~  
21 ~~to fully implement and further comply with Section 20504 of Title~~  
22 ~~52 of the United States Code.~~

23 SEC. 2. ~~Section 2252 is added to the Elections Code, to read:~~

24 ~~2252. (a) If a registered voter requests that the Department of~~  
25 ~~Motor Vehicles inform the Secretary of State that the voter has~~  
26 ~~moved to a different county, the Department shall notify the county~~  
27 ~~elections official in both the county from which the voter has~~  
28 ~~moved, and the county to which the voter has moved, of the change~~  
29 ~~of address.~~

30 ~~(b) This section shall become inoperative on July 1, 2016, and,~~  
31 ~~as of January 1, 2017, is repealed, unless a later enacted statute,~~  
32 ~~that becomes operative on or before January 1, 2017, deletes or~~  
33 ~~extends the dates on which it becomes inoperative and is repealed.~~